(LUMPKIN, J. and FISH, C. J. dissenting.) *Empire Life Ins. Co.* v. *Johnson*, (Ga. 1914), 82 S. E. 893.

The majority opinion is based on the ground that a condition of "voluntary exposure to unnecessary danger" is operative only where the act is wilful and where there is some degree of *consciousness* of the actual danger which results in the accidental death. This conclusion finds support in several other cases where the facts were essentially the same. *Campbell* v. *Fid. & Cas Co.*, 109 Ky. 661; *Collins* v. *Fid. & Cas. Co.*, 63 Mo. App. 253; *Union Cas. Co.* v. *Harroll*, 98 Tenn. 591. It also seems to be in accordance with the general view as to what constitutes "voluntary exposure." Practically all jurisdictions interpret this term as meaning more than mere contributory negligence or want of due care. *Miller* v. *Am. Mut. Acc. Co.*, 92 Tenn. 167; *Follis* v. *U. S. Mut. Acc. Ass'n.*, 94 Ia. 435; *Equitable Ins. Co.* v. *Osburn*, 90 Ala. 201; *Trav. Ins. Co.* v. *Mitchell*, 47 U. S. App. 260; *Shevlin* v. *Am. Mut. Acc. Ass'n.*, 94 Wis. 180; *Trav. Ins. Co.* v. *Randolph*, 78 Fed. 754; *Keene* v. *New Eng. Acc. Ass'n.*, 161 Mass. 149; *Garcelon* v. *Com. Trav. Ass'n.*, 195 Mass. 531; and some courts have even declared that the term means a conscious or intentional exposure involving gross or wanton negligence. *Johnson* v. *Acc. Co.*, 115 Mich. 86. The Wisconsin Supreme Court in *Bakalers* v. *Cont. Cas. Co.*, 122 N. W. 721, declared that "three elements are essential to this excuse from liability—(1) Conscious knowledge of the danger; (2) Intentional or wilful exposure to it; and (3) that danger shall be unnecessary." The second element, that of consciousness of real substantial danger, has been relied on by most courts as the essential to "voluntary exposure." *Traveller's Ins. Co.* v. *Randolph*, 78 Fed. 754; *Keene* v. *New Eng. Mut. Acc. Ass'n.*, 161 Mass. 149; *De Loy* v. *Trav. Ins. Co.*, 171 Pa. 1; *Burkhard* v. *Trav. Ins. Co.*, 102 Pa. 263; *Miller* v. *Am. Mut. Acc. Ins. Co.*, 92 Tenn. 167; *Fidelity Co.* v. *Littig*, 181 Ill. 111; *Ashenfelter* v. *Emp. Liability Corp.*, 87 Fed. 682; *Collins* v. *Bankers Ins. Co.*, 96 Ia. 216; and the Michigan Supreme Court has even declared that the "danger must be obvious." *Hunt* v. *U. S. Acc. Ass'n.*, 146 Mich., 521.

LIBEL AND SLANDER—QUALIFIED PRIVILEGE.—Plaintiff, a minister of the gospel, and defendants, were members of the Colored Baptist Church. During a campaign for state prohibition, plaintiff opposed the adoption of the constitutional amendment to that effect. Defendants, at various conventions of said church, made statements to the effect that plaintiff was a rascal, a whiskey agent, a disgraceful saloon-puller, etc., and introduced resolutions expelling him from membership. *Held*, That the occasion was qualifiedly privileged, and that in the absence of malice being shown, no action could be maintained; but that the statements made were so intemperate, and the epithets applied so vile, as to be alone sufficient to carry the question of malice to the jury. *Dickson* v. *Lights, et al.*, (Tex. Civ. App., 1914), 170 S. W., 834.

The doctrine of this case may be sustained on the ground that a church conference of this kind, called for the purpose of discussing matters pertaining to the welfare and discipline of the church, is a quasi-judicial body. *Farnsworth* v. *Storrs*, 5 Cush. (Mass.), 412. It is well settled that members

of such a body submit to the jurisdiction thereof in matters of faith or individual conduct affecting their relations as members. Therefore accusations made by one member against another, to a body competent to give judgment upon the merit of such charges, are privileged when made without malice. *Lucas* v. *Case,* 72 Ky. 297; *Landis* v. *Campbell,* 79 Mo. 433; *Howard* v. *Dickie,* 120 Mich. 238; *Farnsworth* v. *Storrs,* supra. This doctrine has been extended so as to cover proceedings of voluntary associations and societies, as well as church disciplinary bodies. *Streety* v. *Wood,* 15 Barb. 105; *Barrows* v. *Bell,* 7 Gray 301. But is must be remembered that this privilege is qualified, and that the rules of law applicable in cases of qualified privilege apply here. Thus, if maliciously made, a statement ordinarily not actionable, as made under privileged circumstances, will become so. *Dial* v. *Holter,* 6 Ohio State 228; *White* v. *Nicholls,* 44 U. S. 266; *Elam* v. *Badger,* 23 Ill. 498. Whether or not there was express malice is a question of fact for the jury, the burden being upon the plaintiff to overcome the presumption of lack of malice raised by the privileged circumstances. *Johnson* v. *Brown,* 13 W. Va. 71; *King* v. *Patterson,* 49 N. J. Law 417; *Liddle* v. *Hodges,* 15 N. Y. Super Ct. 537; *Hagan* v. *Hendry,* 18 Md. 177.

MUNICIPAL CORPORATIONS—ESTOPPEL.—The Building Code of the city of Detroit made certain rules as to the erection of tenement houses, but no rule was made requiring a permit for their construction. The Department of Buildings gave defendants a permit to build a tenement which violated one of the requirements of the Code. The building was begun, and about two months later this violation was discovered and written notice served on defendants to stop work; six weeks later the permit was formally revoked, but the defendants continued work even after this. At the suit of the Department of Buildings, the lower court granted a permanent injunction restraining the further construction of the building until the defendants complied with the provisions of the Code. Defendants appealed, claiming that the Department of Buildings, after issuing the permit and allowing defendants to expend large sums of money on the building, was estopped from complaining of the violation of the ordinance. *Held,* that there was no estoppel. *Building Commission of City of Detroit* v. *Kunin,* (Mich. 1914) 148 N. W. 207.

The estoppel of a municipal corporation is, in many cases, made to depend on the distinction between private and governmental functions. *City of Litchfield* v. *Litchfield Water Supply Co.,* 95 Ill. App. 647, holds that a municipal corporation may be estopped by the action of its *proper* officer, when the corporation is acting in its private, as contra-distinguished from its governmental, capacity. The modern and more accurate division of municipal powers into *governmental, municipal,* and *commercial* functions seems not to have been recognized in the cases dealing with this question. In *Martel* v. *City of East St. Louis,* 94 Ill. 67, the court says: "Any positive acts by municipal officers which may have induced the action of the adverse party, and when it would be inequitable to permit the corporation to stultify itself by retracting what its officers had done, will work an estopped." This rule is